

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 751 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NAVENDRAM H. CHANDNANI

Versus

JASSARAM SITALDAS

Appearance:

MR CH VORA for Petitioner

MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 15/02/2000

ORAL JUDGEMENT

1. Petitioner, original defendant-tenant, by filing this Civil Revision Application under Section 29(2) of the Bombay Rents (Hotel & Lodging House Rates Control) Act, 1947 ('Act' for short), has challenged the judgment and decree dated January 24, 1984, passed by learned

District Judge, Kachchh at Bhuj, in Regular Civil Appeal No.62 of 1981, whereby learned District Judge confirmed the decree for possession passed by learned Civil Judge (J.D.), Gandhidham, Kachchh, in Civil Suit No.103 of 1979, against the petitioner.

2. Respondent-original plaintiff is the owner and land-lord of House bearing No. S.A.X. 83 situated at Adipur. The said house was let out to the petitioner on a monthly rent of Rs.18/- exclusive of taxes. As the petitioner was in arrears of rent from 1.2.1979 to 31.3.1979, and as the land-lord required the suit premises for his personal bona fide requirement, the petitioner was served with a statutory notice on February 12, 1979, terminating his tenancy and demanding vacant possession of the suit premises along with arrears of rent. As the petitioner failed to comply with the notice, the respondent filed Civil Suit No.103 of 1979 in the Court of learned Civil Judge (J.D.), Gandhidham-Kutchch. Learned Civil Judge (J.D.), Gandhidham-Kutchch, recorded oral as well as documentary evidence, and, ultimately, by his judgment and decree dated March 20, 1981, fixed mesne profit at Rs.18/- per month and passed a decree for possession of the suit premises against the petitioner. The said decree was challenged by the petitioner in the District Court, Kachchh, at Bhuj, by Regular Civil Appeal No.62 of 1989. Learned District Judge, Kachchh at Bhuj, after going through the evidence adduced in the trial court and after hearing learned advocates for the parties, confirmed the decree for possession passed by the trial court, and dismissed appeal filed by the petitioner with costs, which has given rise to filing of present Civil Revision Application by the petitioner-original tenant.

3. Learned counsel for the petitioner has taken me through the entire record and proceedings of the courts below. Learned counsel for the petitioner has vehemently submitted that the findings recorded by the courts below were contrary to the evidence on record and the courts below had erred in holding that the suit premises were required by the land-lord for his personal bona-fide use and occupation. Learned counsel further submitted that the courts below had not properly appreciated that, if the decree for possession was passed, greater hardship would be caused to the petitioner rather than to the respondent. Learned counsel for the petitioner further submitted that the courts below had not properly appreciated the evidence produced on record and had erred in passing the decree for possession.

4. In my view, none of the contentions raised by learned counsel for the petitioner deserves any merit. The courts below had properly appreciated the oral evidence adduced by the respondent that he required the suit premises for himself and his family members. The courts below had also held that, if decree for possession of suit premises is not passed, greater hardship would be caused to the respondent-landlord rather than to the petitioner. Both the courts below had held that the respondent and his family members needed suit premises for their personal use. The courts below also recorded finding that, if decree for possession was not passed in favour of the respondent, greater hardship would be caused to him as well as to his family members. These being concurrent findings of fact recorded by both the courts below, I do not find any merit in this Civil Revision Application to interfere with the same. The Supreme Court, in the case of Patel Valmik Himatlal vs. Patel Mohanlal Muljibhai, (1998) 7 Supreme Court Cases 383, has laid down that powers of the High Court under Section 29(2) of the Rent Act are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision, but it does not vest the High Court with the power to rehear the matter and reappraise the evidence. The mere fact that a different view is possible on reappraisal of the evidence cannot be a ground for exercise of the revisional jurisdiction. The High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts below on reappraisal of evidence. Since both the courts below had recorded concurrent findings of fact, in view of the principles laid down by the Supreme Court in Patel Valmik Himatlal's case (supra), it will not be open to this Court to reopen the case and record a contrary finding.

5. These are the only submissions advanced by learned counsel for the petitioner.

6. As a result of foregoing discussion, this Civil Revision Application fails and is hereby dismissed. Interim relief is vacated. Rule is discharged with no order as to costs.

(swamy)